FILE COPY

Office Supreme Court, U.S.
FILED
JAMES R. BR...

IN THE

Supreme Court of the United States

October Term, 1960.

No. 812

FRANCIS L. HARMON,

Appellant,

vs.

RUTH ELIZABETH HARMON,

Appellee.

On Appeal from the District Court of Appeal of the State of California, Second Appellate District.

JURISDICTIONAL STATEMENT.

FRANCIS L. HARMON,
628 North Beachwood Drive,
Los Angeles 4, California,
Appellant pro se

Parker & Son, Inc., Law Printers, Los Angeles Phone MA. 6-9171.

SUBJECT INDEX

	PAGE
Opinion below	1
Jurisdiction	2
Questions presented	2
Statement	3
The questions are substantial	5
Conclusion	13

Appendices:

Appendix A. The "Minute Order" constituting the "Final Judgment" ..... App. p. 1

Appendix B. Opinion of the District Court of Appeal ..... App. p. 3

TABLE OF AUTHORITIES CITED

CASES	PAGE
Chessman v. California, 354 U. S. 156	8
Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282	2, 7
Guaranty Trust Co. v. Blodgett, 287 U. S. 509	2, 7
Harmon v. Harmon, 358 U. S. 881	3
United States Constitution, Fourteenth Amendment, Sec. 1	3, 4, 7, 12, 13

STATUTES	
California Code of Civil Procedure, Sec. 663	4, 10
California Code of Civil Procedure, Sec. 1650 et seq.	2
California Code of Civil Procedure, Sec. 1682	2
United States Code, Title 28, Sec. 1257(2)	2

IN THE

Supreme Court of the United States

October Term, 1960.
No. .....

FRANCIS L. HARMON,

Appellant,

vs.

RUTH ELIZABETH HARMON,

Appellee.

On Appeal from the District Court of Appeal of the State of California, Second Appellate District.

JURISDICTIONAL STATEMENT.

Appellant appeals from the decision of the District Court of Appeal of the State of California, Second Appellate District, entered on August 29, 1960 affirming an Order of the Superior Court of the State of California in and for the County of Los Angeles, and submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

Opinion Below.

The decision of the District Court of Appeal is reported in 184 Adv. Cal. App. 270 and 7 Cal. Rptr. 279. A copy of the Opinion which contains the findings of fact and conclusions of law is attached hereto as an Appendix.

Jurisdiction.

This action was brought under the California Uniform Reciprocal Enforcement of Support Act (Code Civ. Proc. §1650 *et seq.*). The decision of the California District Court of Appeal was entered August 29, 1960. A petition for rehearing was denied September 16, 1960, a petition for hearing by the California Supreme Court was denied October 26, 1960, and a notice of appeal was filed in the District Court of Appeal on January 24, 1961. The jurisdiction of the Supreme Court to review the decision by direct appeal is conferred by Title 28, United States Code, Section 1257(2) and cases sustaining this jurisdiction are *Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282 and *Guaranty Trust Co. v. Blodgett*, 287 U. S. 509, 513.

This appeal is taken from the judicial administration and interpretation of the California Uniform Reciprocal Enforcement of Support Act (Code of Civ. Proc. §1650 *et seq.*) and especially in respect to Section 1682 thereof which provides:

> "The court shall conduct proceedings under this title in the manner prescribed by law for an action for the enforcement of the type of duty of support claimed."

Questions Presented.

I. Does a finding of fact that a father is a resident of Los Angeles County support a conclusion of law that he must support his children in another state?

II. Is the California Uniform Reciprocal Enforcement of Support Act and its judicial administration and interpretation repugnant to the "due process of

law" guaranteed to all American Citizens by Section 1 of the 14th Amendment to the Constitution of the United States in that they permit the entry of Orders amounting to Final Judgments which are supported only by a finding of fact that the defendant is a father residing in Los Angeles County?

III. Does a refusal of a trial court to provide a litigant with a complete transcript of the proceedings held before it for review by an appellate court deny the litigant due process of law required by the 14th Amendment?

IV. Do misstatements of facts by an appellate court in its opinion which result in an erroneous decision deny a litigant due process of law required by the 14th Amendment?

Statement.

As set forth in considerable detail in the record and Petition for Certiorari in *Harmon v. Harmon*, 358 U. S. 881, Appellee illegally and surreptitiously kidnapped Appellant's daughter from his home and has illegally kept her therefrom continuously since the commission of that evil deed, although Appellant has repeatedly requested and demanded her return to his lawful custody. When to the detriment of all American homes and children, certiorari was denied in 1958, a careful study was made to determine the cause of this regrettable action, which study revealed that under California law the decision or order appealed from was not final which necessitated the denial of certiorari.

Thus in order to exhaust his state remedies, appellant moved the trial court pursuant to the provisions of

California Code of Civil Procedure, Section 663, to vacate its Order of May 17, 1956 upon the ground that the findings of fact made do not support the conclusions of law reached and upon the further ground that the Support Act and its administration and interpretation are in violation of the due process of law guaranteed to all American citizens by Section 1 of the 14th Amendment to the United States Constitution [R. 6-17, 30].

Although the only finding of fact concerning the Appellant was that he is a father residing in Los Angeles County [R. 1 and the Opinion set forth in Appendix], the trial court refused to vacate its Order of May 17, 1956 [R. 18].

The court then ordered its trustee to transmit Appellant's funds to the Appellee and such order was sustained on appeal on the ground that it was made pursuant to a stipulation when as clearly shown by the record [R. 93] no stipulation in fact existed.

Appellant also appealed from the Order denying his motion to vacate and requested a complete Reporter's Transcript of the proceedings had before the trial court. At two places in the transcript the reporter omitted rather extensive presentation of law and facts upon which the court based its decision [R. 32]. Appellant moved the court to correct its Reporter's Transcript [R. 88], but the Court denied this motion and refused to correct its transcript [R. 89]. The trial court's order refusing to correct its transcript so as to furnish Appellant with a complete transcript on appeal was sustained in the appellate courts.

The Questions Are Substantial.

It is an understatement to refer to the questions as merely being substantial. A more apt description would be "foundational" since they refer to the most elementary and basic essentials of both family life and judicial procedure and the foundation upon which they are built. From an examination of this case (and many others) it is obvious that in California and New York (and likely several other states) this foundation has been completely washed away and that residents of these states must look solely to the federal courts for the protection of their rights as American Citizens.

Questions II, III and IV are federal *per se* and an affirmative answer to Question I would violate federal rights. The jurisdiction of the Court to review these proceedings by direct appeal is based upon Question III, but the general situation is more easily understood when the questions are considered in numerical order.

Question I.

Regarding Question I the (so-called) "findings" [of fact] as set forth in the Opinion are (with numerals added for convenience in reference):

> "The court found (1) that Pauline is the minor child of Ruth and Francis; (2) the minor is residing with Ruth in Fairfax County, Virginia, and (3) the minor is partially dependent upon Francis for support; (4) Francis owes a duty of support of the minor; (5) Francis resides in Los Angeles County; (6) a reasonable amount to be contributed by Francis toward the support of the minor is $30 a month, and (7) he has the ability to pay that amount."

Analyzing these "findings" one by one we find that they can be described as follows:

(1) A finding of fact that Ruth and Francis have a daughter, or conversely, that Francis is a father;

(2) A fact not regarding Francis;

(3) A conclusion or opinion;

(4) A conclusion or opinion;

(5) A fact that Francis resides in Los Angeles County;

(6) A conclusion or opinion;

(7) A conclusion or opinion.

After enumerating and considering each of these (so-called) "findings" it becomes obvious that they add up merely to a finding of fact that Francis is a father who is residing in Los Angeles County which obviously does not support a conclusion of law of any type and clearly indicates the illegal and unconstitutional nature of this action.

Question II.

These proceedings are muddled . . . deliberately . . . by the Appellee and by the state courts . . . because it is only by evading facts, law and the constitution that the Appellee has prevailed, or can prevail. Nevertheless these evasions cannot defeat the jurisdiction of this court to review the situation on a direct appeal because its appellate jurisdiction is dependent upon two things, both of which are present in this action. The first is the duly raised objection that the Support Act and its judicial administration and interpretation are repugnant to the due process of law required by the

14th Amendment and the second is that the decision overrode this objection. This is a fairly common situation which has been noted in many cases, two of which state:

> "Our conclusion on the jurisdictional question is that, as the state court applied and enforced to the plaintiff's disadvantage a state statute which the plaintiff seasonably insisted as so applied and enforced was repugnant to the Constitution and void, the case is rightly here on writ of error." *Dahnke-Walker Co. v. Bondurant,* 257 U. S. 282, 290.

Furthermore it is not essential that the repugnancy to the Constitution be set forth in the statute.

> "Since the court below construed the act . . . we are bound by the decision of that court as though the meaning as fixed by the court had been expressed in the statute itself in specific words." *Guaranty Trust Co. v. Blodgett,* 287 U. S. 509, 513.

Thus the technical jurisdiction of the Court is clearly established. As to the importance of the question, it is more than "substantial", it is *foundational* to the most elementary concept of not only "due process" but "any process" of law. The "judicial administration and interpretation of the law" illustrated by these proceedings represents a flagrant disregard of law and the constitution and represents a breath-taking change in the method of torturing justice which for several decades has been a highly developed art in the Los Angeles Divorce Mill. During these decades the destruction of justice has been more subtle and based upon some pre-

text of legality such as making "findings of fact" knowingly based upon obviously false, absurd and perjured testimony. From this type of lawlessness the "Mill" has now "progressed" to arriving at "conclusions of law" which are not supported by any "findings" whatsoever. This type of efficiency eliminates such details as "issues" and "testimony" and the necessity of making "findings" which are clearly contrary to the evidence. In a county in which this vicious and corrupt "Mill" now breaks up one in two marriages, lowers most of the remaining ones to near intollerable situations and turns our children into juvenile delinquents so that statistics of the FBI show it to have the highest rate of crime and juvenile delinquency of any in the United States, it remains to be seen how much longer a long suffering populace will tolerate its operation for the profit of its operators.

Question III.

It is not only self-evident that the refusal of a trial court to provide a litigant with a complete transcript on appeal deprives him of due process of law, but furthermore in effect this Court has already provided the answer to the question. Thus in respect to a record on appeal which at least purported to be complete and accurate, merely because the defendant did not participate in the settlement of the transcript, this Court stated, ". . . we must hold that the *ex parte* settlement of this state court record violated petitioner's constitutional right to procedural due process." (*Chessman v. California*, 354 U. S. 156). It is of course obvious that if the mere absence of a defendant at the settlement of a transcript constitutes a violation of due

process because the resulting transcript *may* be inaccurate or incomplete, then the outright refusal of a trial court to provide a complete record *must* constitute a denial of due process. While mere compliance with due process of law is by no means sufficient to secure justice, without due process all is lost.

Question IV.

Although there appear to be no cases in point because previously no one has raised the question, it appears to be obvious that a decision based upon an appellate court's falsehoods and half-truths as set forth in its opinion is as extreme a denial of due process of law as possibly could exist. Thus if one be tried for driving 31 mph in a 30 mile zone and be sentenced to be hung, on appeal he might well point out that the jury brought in a verdict of "not guilty" and that in any event the law does not provide for hanging persons charged with driving 31 mph. On appeal the Opinion fails to mention the "not guilty" verdict, states that the trial did not violate due process of law and therefore this contention is not sustainable. Furthermore, the laws of this state provide for capital punishment, the appeal is without merit and the victim shall be hung forthwith. In another opinion it will be set forth that since the refusal of a trial court to provide a transcript on appeal is not an appealable order, there is no remedy for the omission of the jury's "not guilty" verdict, which would not affect the decision in any event.

While this collection of irrelevant comments are not exactly parallel to the instant proceedings, there is a strong resemblance. For the sake of comparison let us

consider some of the statements in the "Opinion" of these proceedings.

> "The contention is based on a false premise. The court did not merely find that defendant was a resident of Los Angeles County."

These are two consecutive, unmitigated falsehoods, The contention is precisely in point and not based on a false premise. As set forth in detail under Question I, *supra*, and as set forth in the Opinion itself, the only finding of fact concerning the defendant was that he was a father residing in Los Angeles county. In a Petition for Rehearing in a similar manner it was pointed out that the statement was untrue, but the court refused to correct its bare-faced lie.

> "There was no showing the minor child was in unfit surroundings in another state."

In spite of the trial court's diligent efforts to exclude all relevant evidence, sufficient testimony slipped by to indicate clearly the unfit surroundings in which the child has been kept. The only escape from classifying this as another deliberate falsehood is that it is not so much a statement of fact as the expression of an opinion.

> "At the time of defendant's motion the order of May 17, 1956 had become final and the trial court had no alternative but to deny the motion."

This statement is not only false, but the fact is concealed by omission that the motion was made as a statutory right squarely within the provisions of Section 663

of the California Code of Civil Procedure [R. 6] as a prescribed means of setting aside an erroneous judgment.

"It has long been settled that the Act does not violate the due process clause."

Such a statement is preposterous on its face since it can never be "settled" that any act is not unconstitutional. Even if an act is not clearly unconstitutional on its face, as this one is, it may be rendered so by illegal and bestial interpretations as have occurred repeatedly with this act. While it has taken this court nearly a century to decide to follow the Constitution regarding segregation (which is a very trivial matter in comparison with the corrupt and evil attack against all American families carried on in the name of the Support Act, but actually in violation of it and all other related laws and the Constitution) society can but hope that the Court will not be so tardy in acting on this grisly situation.

"Defendant is bound by his stipulation."

Another false statement which Appellant sought to have corrected by a Petition for Rehearing. As clearly shown by the record Appellee flatly refused to stipulate to anything and there is no stipulation of any kind in these proceedings. Thus the Reporter's Transcript [R. 93] regarding this matter shows the following:

"Mr. Pressman: May the record show that I am not in a position to so stipulate?

"The Court: The record may so show."

* * * * * * *

"Defendant complains of the omission from the Reporter's Transcript of his oral argument on the hearing of the motion to vacate."

> "Defendant complains of the omission from the Reporter's Transcript of his oral argument on the hearing of the motion to vacate."

This statement constitutes much less than a half-truth. The sly use of the word "complains" conceals the fact that objection was made in due form that the refusal of the trial court to furnish a complete transcript was a violation of not only state law and Rules on Appeal, but constitutes a flagrant denial of due process of law guaranteed by the 14th Amendment. By concealing the nature of the objection the court thus evaded ruling on the point. Furthermore it is also much less than a half truth in stating that the objection was to the omission of "his" oral argument whereas in fact the principal objection was to the omission of false statements of fact and irrelevant, repealed and overruled citations of law made by the Appellee and upon which the court based its decision.

> "This question is the subject of the appeal in a companion case, *Harmon v. Harmon*, *post* p. Second Civ. 24305, and will be considered in the decision of that appeal."

Since as set forth *supra*, the nature of "This question" has been obscured so as to avoid answering it, it must be kept in mind by the reader that it relates to the violation of law and the constitution engendered by the refusal of a trial court to furnish a complete transcript on appeal. In the "companion case" no reference whatsoever is made to "this question" and it has been successfully evaded. While the sophistry set forth in the "companion case" is of questionable merit, it merely holds that an appellant has no remedy by way

of a *separate appeal* from a trial court's order refusing to provide a complete transcript. It has no bearing whatsoever on the denial of due process of law created thereby which is the question presented in *this appeal*.

Conclusion.

On a recent television program it was pointed out that to date California has not ratified the 14th Amendment which may explain why it appears to have no force and effect in this state. However this fact is not generally known and many persons are puzzled by the situation existing here.

Some persons imply that Appellant suffers from a "persecution complex" and believes he is suffering from discriminatory treatment. Nothing could be farther from the truth. There is nothing unusual about this case. Rather it was when the case first commenced and Appellant noticed that callous disregard of law and the Constitution was routine procedure here that he decided that it should be exposed for what it is from every angle . . . and that he would not be brushed off by opinions that falsely set forth the facts and disregard law and the Constitution. So long as this lawless condition exists and even though justice is now non-existent in this state, until it is available, in search thereof (to borrow from MacArthur), I shall return.

Respectfully submitted,

FRANCIS L. HARMON,
Appellant pro se.

APPENDIX A.

The "Minute Order" Constituting the "Final Judgment."

In Department 8 of the Superior Court of the State of California, in and for the County of Los Angeles.

Date: May 17, 1956.

Honorable Elmer D. Doyle, Judge; T. Kurtz, Deputy Clerk; R. J. Burrell, Deputy Sheriff; H. R. Person, Reporter.

Resl 7124.

Ruth Elizabeth Harmon v. Francis L. Harmon.

Counsel for Plaintiff: S. Ernest Roll, District Attorney, and Harold Pressman.

Counsel for Defendant: John Weyl.

NATURE OF PROCEEDINGS:

UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

Defendant's Motion to Quash is argued and denied; and

Defendant's Exhibit "A" (Group of Checks) is admitted in evidence and filed; and

Defendant is sworn and testifies.

The petition of Ruth Elizabeth Harmon having been heard, the court makes the following findings of fact and order:

That the minor child listed in said petition is the minor child of the petitioner and the respondent; that said minor child is residing with the petitioner in the County of Fairfax, State of Virginia, and is partially dependent upon the respondent for support; that the

respondent owes a duty of support of said minor child; that the respondent resides in the County of Los Angeles, State of California; that the sum of $30 a month is a reasonable amount to be contributed by the respondent toward the support and maintenance of said minor child; that the respondent has the present ability to pay said amount.

It is therefore ordered that the respondent owes a duty of support of the minor child herein; and that he pay through the office of the Probation Officer in and for the County of Los Angeles, State of California, for the support and maintenance of said minor child $15 on the 10th and $15 on the 25th days of each month commencing May 25, 1956, to continue until further order of court. The Probation Officer is ordered to hold any and all monies received from this respondent in connection with these proceedings pending decision on appeal. The court further orders that the clerk of the Superior Court, in and for the County of Los Angeles, State of California, transmit a copy of this order, forthwith, to clerk of the Juvenile and Domestic Relations Court, Fairfax County, Virginia; together with a copy of the transcript of these proceedings.

APPENDIX B.

Opinion of the District Court of Appeal.

In the District Court of Appeal of the State of California, Second Appellate District, Division Three.

Ruth Elizabeth Harmon, Plaintiff and Respondent, vs. Francis L. Harmon, Defendant and Appellant. Civil No. 24322, Filed August 29, 1960.

Appeal from orders of the Superior Court of Los Angeles County. Elmer D. Doyle, Judge. Affirmed. Francis L. Harmon, *in propria persona*, for Appellant.

Stanley Mosk, Attorney General, and Norman L. Epstein, Deputy Attorney General, for Respondent.

Appeal by defendant from orders made in a proceeding under the Uniform Reciprocal Enforcement of Support Act. (Code Civ. Proc., §§1650-1690.)

On May 17, 1956 the superior court made an order directing defendant to pay specified amounts of money for the support of his minor child through the office of the probation officer of Los Angeles County, and that the probation officer hold all money so paid pending a decision on appeal. The order was affirmed by this court on May 2, 1958. (Harmon v. Harmon, 160 Cal. App. 2d 47.) A petition for hearing by the Supreme Court was denied, and a petition for a writ of certiorari to the Supreme Court of the United States was denied. (Harmon v. Harmon, 358 U. S. 881, 3 L. Ed. 2d 110, 79 S. Ct. 120.)

On the going down of the remittitur, defendant filed a notice of motion to vacate the order of May 17, 1956 and for entry of a judgment of dismissal in lieu there of. On December 5, 1958, after oral argument,

the motion was denied. On plaintiff's motion, made without notice at the hearing of the motion to vacate and after it had been denied, the court ordered the probation officer to transmit forthwith to plaintiff for the support of the minor child all moneys held by him pending the appeal. Defendant appeals from these orders.

The first contention is that a finding of fact that a father is a resident of Los Angeles County does not support a conclusion of law that he must support his children in unfit surroundings in another state. The contention is based on a false premise. The court did not merely find that defendant was a resident of Los Angeles County. There was no showing the minor child was in unfit surroundings in another state. "The court found that Pauline is the minor child of Ruth and Francis; the minor is residing with Ruth in Fairfax County, Virginia, and the minor is partially dependent upon Francis for support; Francis owes a duty of support of the minor; Francis resides in Los Angeles County; a reasonable amount to be contributed by Francis toward the support of the minor is $30 a month, and he has the ability to pay that amount." (Harmon v. Harmon, *supra*, 160 Cal. App. 2d 47, 50.) At the time of defendant's motion the order of May 17, 1956 had become final and the trial court had no alternative but to deny the motion. (4 Cal. Jur. 2d 577, Sec. 679.)

It is next contended the Uniform Reciprocal Enforcement of Support Act is repugnant to the due process clause of the 14th Amendment. It has long been settled that the Act does not violate the due process clause. (Smith v. Smith, 125 Cal. App. 2d 154, 167-8.)

It is contended the court erred in granting plaintiff's motion for an order directing the probation officer to transmit the money which defendant had paid during the pendency of the appeal to plaintiff for the support of the minor child. The point has no merit. At the hearing of May 17, 1956 defendant's counsel suggested that the money defendant was to pay under the order be held by the court trustee pending an appeal. Defendant then stipulated that the payments falling due pending appeal "be deposited twice monthly by Mr. Harmon and . . . sent to Mr. Karl Holton's (probation officer) office . . . until the appeal is determined one way or the other; and if it is determined favorable to the petitioner it will go to her in one lump sum and if not, it will be returned to the respondent." On the making of the stipulation, the court stated: "All right, that will be the order." Defendant is bound by his stipulation.

Defendant complains of the omission from the reporter's transcript of his oral argument on the hearing of the motion to vacate. This question is the subject of the appeal in a companion case, Harmon v. Harmon *post* p. ....., Second Civ. 24305, and will be considered in the decision of that appeal.

The appeal is without merit.

The orders appealed from are affirmed.

Valleé, *J.*

We concur:

Shinn, *P. J.*

Ford, *J.*